

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CR 07-1761 JB

MICHAEL C. REY,

Defendant.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on the Opposed Motion to Extend Motions Deadline, filed January 14, 2009 (Doc. 107)(“Motion”). The primary issue is whether the Court should continue, at Defendant Michael C. Rey’s request, the motions deadline for sixty days -- from February 20, 2009, to April 21, 2009. Because this motion is the first opposed motion to move the deadlines, because there have been many unopposed motions to date, and because new counsel have recently entered appearances, the Court will grant the motion, but will require more particularized justification for any future continuances.

PROCEDURAL BACKGROUND

The grand jury returned the indictment against Rey on August 23, 2007. Rey is currently on conditions of release. Since August of 2007, not including this motion, Rey has filed fifteen motions for extensions of time to file motions. The United States did not oppose any of those motions.

Rey was unhappy with his prior representation. Rey, whose father is an attorney in El Paso, Texas, represents that he understands that he has but one opportunity to litigate the constitutional issues of a search which resulted in the discovery of alleged contraband. In the latest unopposed

motion for extension of time to file motions, which Rey filed on December 18, 2008, Rey noted that he was in the process of obtaining substitute counsel. Accordingly, Rey requested an extension until February 20, 2009, so that substitute counsel would have time “to review discovery, investigate facts and research issues raised prior to preparing motions in this case.” Unopposed Motion for Extension of Time to File Motions, filed December 18, 2008 (Doc. 101). The Court granted the motion. Hence, Rey’s current deadline to file motions is February 20, 2009.

Rey’s new counsel, attorney Robert J. Gorence, along with attorney Jason Bowles, received the files of Rey’s prior counsel, Robert Cooper, in the first week of January, 2009. Mr. Gorence subsequently entered his appearance on January 6, 2009, in substitution for Mr. Cooper. See Entry of Appearance and Substitution of Counsel, filed January 6, 2009 (Doc. 105). Mr. Gorence’s co-counsel, Mr. Bowles, entered his appearance as co-counsel on January 13, 2009. See Entry of Appearance, filed January 13, 2009 (Doc. 106). Rey’s counsel have not filed, pursuant to D.N.M.LR-Cr. 44.1(e), a motion and form of order allowing the withdrawal and substitution of counsel.

Rey represents that he needs additional time for his ongoing investigation. Rey’s new counsel intend to file a motion to suppress. Rey has retained a private investigator, who has started an investigation pertaining to matters with the affidavit used to obtain a state search warrant. Rey represents that he should complete his investigation by March 1, 2009. Rey’s counsel also represent that they have started preparing various motions.

Before filing this motion, Rey’s counsel contacted Assistant United States Attorney James R.W. Braun. Mr. Braun opposes this motion.

On January 14, 2009, Rey filed this motion for an extension of time to file motions. Rey moves the Court to enter an order extending the deadline for filing motions. Specifically, Rey

requests that the Court enter an order extending the motions deadline for sixty days -- from February 20, 2009, until April 21, 2009.

In his motion, Rey did not give a specific reason why he cannot file his motions by the previously established date of February 20, 2009, stating only that counsel “need additional time for the ongoing investigation of this matter.” Motion ¶ 4, at 1. In his reply, however, Rey asks that his counsel have three weeks with the fruits of the independent investigation, or until March 23, 2009, to file motions. See Reply to United States’ Response to Defendant’s Motion to Extend Motions Deadline (Doc. 108) ¶ 1, at 1, filed January 30, 2009 (Doc. 109). Rey represents that he will request no additional extensions. See id.

The United States requests that the Court deny Rey’s opposed motion to extend motions deadline. The United States contends that the reasons Rey gives for an extension in his motion is too general. The United States maintains that a simple need for additional investigative time is “insufficient to justify yet another extension.” United States’ Response to Defendant’s Motion to Extend Motions Deadline (Doc. 107), filed January 28, 2009 (Doc. 108).

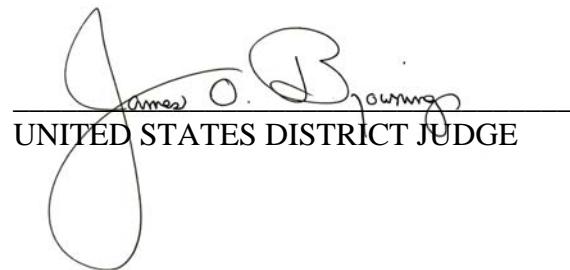
ANALYSIS

The United States submits that Rey’s stated reason for the extension is insufficient to justify another extension. Rey’s motion does not appear, however, to be an attempt to delay, in any significant way, the progress of his case. Moreover, Rey’s new counsel believe that they need to raise substantial issues with regard to the conduct of state and local law enforcement officers in their effort to obtain the alleged contraband in this case.

Rey represents that he will put these matters before the Court by no later than March 23, 2009. Given that Rey is on conditions of release, the Court ascertains little prejudice to Rey or to the United States from the additional delay. Moreover, because this is the first opposed motion to

move the deadlines, because there have been many unopposed motions to date, and because new counsel have recently entered appearances, it seems unfair to deny this motion without putting Rey on some notice that this case needs to begin to move along in a different manner than it heretofore has moved. Accordingly, the Court will grant the motion, but will require more particularized justification for any future continuances.

IT IS ORDERED that the Opposed Motion to Extend Motions Deadline is granted.



The image shows a handwritten signature in black ink. The signature appears to read "John O. Braun". Below the signature, the text "UNITED STATES DISTRICT JUDGE" is printed in a standard font, centered under the signature.

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-- and --

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